IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

Dist. Ct. Nos. 2:02-cr-00151-MCE-CMK 2:07-cv-00247-MCE-CMK

Ninth Cir. No. 08-16630

ORDER

SCOTT MICHAEL VOGELSANG,

VS.

UNITED STATES OF AMERICA,

Respondent,

Movant.

Movant, a federal prisoner proceeding pro se, brings this motion to correct or set aside a criminal judgment pursuant to 28 U.S.C. § 2255. Pending before the court is movant's request for a certificate of appealability (Doc. 252 in the criminal docket).

Movant has timely filed a notice of appeal of this court's denial of his motion under 28 U.S.C. § 2255. Before movant can appeal this decision, a certificate of appealability must issue under 28 U.S.C. § 2253(c). See Fed. R. App. P. 22(b); see also 28 U.S.C. § 2255. A certificate of appealability may issue under 28 U.S.C. § 2253 "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue.

Case 2:02-cr-00151-MCE-CMK Document 260 Filed 10/17/08 Page 2 of 2

<u>See</u> Fed. R. App. P. 22(b). For the reasons set forth in the magistrate judge's April 8, 2008, findings and recommendations, movant has not made a substantial showing of the denial of a constitutional right.

Accordingly, IT IS HEREBY ORDERED that:

- 1. Movant's request for a certificate of appealability is denied; and
- 2. The Clerk of the Court is directed to send a copy of this order to the Ninth Circuit Court of Appeals, attention Susan Gelmis.

Dated: October 17, 2008

MORRISON C. ENGLAND) JR. UNITED STATES DISTRICT JUDGE